

## Revisiting the Debates on the 2010 Constitutional Referendum in Turkey: Democratic Transition or Authoritarian Populism?

### Türkiye’de 2010 Anayasa Referandumunu Tartışmalarına Yeniden Dönmek: Demokratik Geçiş mi, Otoriter Popülizm mi?

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#### Abstract

This article revisits the scholarly debates on the AKP’s constitutional amendment package that was put to vote in the 2010 Turkish Constitutional Referendum. It takes the democratic theorist Andrew Arato and law professor Aslı Bali as major representatives of the two opposing views on the political implications of the reform proposal. It compares and contrasts their arguments particularly in light of their different assessments of the amendments which concern the restructuring of the judiciary, especially the Turkish Constitutional Court. It argues that their fundamental controversy with regard to the democratic or authoritarian nature of these amendments is rooted in the contrast between Bali’s predominantly context-bound and Arato’s predominantly global approach. While Bali affirms the reform proposal as a democratic step forward in transcending the persistent legacy of the Kemalist authoritarian “tutelary” regime represented by the Constitutional Court, Arato interprets it as a manifestation of the global populist-authoritarian retreat that expresses itself most visibly through assaults on the independent judiciary. After a critical reading of these two approaches, this paper finalizes by way of introducing a new framework that would counterbalance the context-bound approach with the global one and *vice versa* that would arguably provide a new perspective through which one could unveil the particular characteristics of the AKP’s populist constitutional politics at the time of the Referendum.

**Keywords:** 2010 Constitutional Referendum, Turkish Constitutional Court, Judiciary, Populism, Liberal Democracy, Kemalism

#### Öz

Bu makale 2010 Türkiye Anayasa Değişikliği Referandumu’nda oylamaya sunulan anayasa değişiklik paketi üzerine yapılan bilimsel ve akademik tartışmalara yeniden bakmaktadır. Demokrasi kuramcılarından Andrew Arato ile hukuk profesörü Aslı Bali, bu paketin siyasal içerimlerine dair iki zıt görüşün başlıca temsilcileri olarak ele alınmaktadır. Makale bu iki akademisyenin fikirlerini yargının ve özellikle de Anayasa Mahkemesi’nin yeniden yapılandırılmasını ilgilendiren anayasa değişikliklerine

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yönelik yaklaşımları ışığında karşılaştırmaktadır. Bu değişikliklerin demokratik veya otoriter doğasına ilişkin olarak iki yazarın arasındaki ihtilafın, Bali'nin (ağırlıklı olarak) bağlam odaklı ve Arato'nun (ağırlıklı olarak) küresel yaklaşım biçimleri arasındaki farktan kaynaklandığını iddia etmektedir. Buna göre Bali değişiklikleri Anayasa Mahkemesi'nin temsil ettiği Kemalist otoriter “vesayetçi” rejimin süreklilik teşkil eden mirasının aşılması yönünde önemli bir adım olarak olumlarken, Arato aynı değişiklikleri en belirgin olarak bağımsız yargıya yönelik saldırılarda ifadesini bulan küresel bir otoriter-popülist “geri çekilme”nin tezahürü olarak değerlendirmektedir. Bu makale, bu iki yaklaşım biçimine yönelik eleştirel bir değerlendirmeden sonra, Referandum döneminde AKP'nin anayasa siyasetinin özgül niteliklerini kavramak için küresel ve bağlam odaklı yaklaşımları birbirine karşı dengeleyen yeni bir çerçeve sunarak sonlanmaktadır.

**Anahtar Kelimeler:** 2010 Anayasa Referandumu, Anayasa Mahkemesi, Yargı, Popülizm, Liberal Demokrasi, Kemalizm

## 1. Introduction

Turkish politics is approaching yet another era of constitutional debates. The Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) leader and President Erdoğan's constant calls for a new *civilian* constitution in Turkey will most likely trigger debates on two fronts once again, one concerning the underlying authoritarian political intentions behind this proposal and the other concerning the authoritarian legacy of the constitution-making practices in Turkey which has found its utmost expression in the constitution still in force, i.e. the 1982 Constitution drafted and laid down by the military regime in Turkey (1980-1983). Taking its cue from the anticipation of the likely emergence of discussions around these two aspects, this paper revisits the heated debates on the AKP's constitutional reform proposal that was put to vote in the 2010 Referendum in Turkey.

To recall, Turkey's 2010 Referendum did not only happen to be one of the turning points in the AKP's consolidation of power both with regard to its electoral results, i.e., the ratification of the constitutional proposal by 58 percent of the votes and its consequences in paving the ground for the AKP to restructure the high judiciary, it was also the scene of major political as well as intellectual debates and controversies that still persist in today's discussions. On the one hand, during the Referendum process, there occurred, in Kalaycıoğlu's words, the expected resurgence of a clash between secular and conservative political elites which represented and augmented the already existing *KulturKampf* between the two opposing pro-secular and conservative community life-styles in Turkey, each accusing the other of assaulting democracy in different ways (Kalaycıoğlu, 2012, see Gülaıp, 2010). On the other hand, there also emerged a different form of polarization in intellectual and scholarly debates on the potentially democratizing or autocratizing dynamics of this proposal, especially amongst political scientists, constitutional scholars, political activists and journalists. While one side defended the proposal on the grounds that it was a step forward in Turkey's 'democratic transition' insofar as it challenged the bulwarks of the Kemalist<sup>1</sup> authoritarian legacy of Turkish political architecture represented most vividly

1 Kemalism is the founding ideology of the Turkish Republic (1923) named after the founder of the state, Mustafa Kemal Atatürk. In the 1930s, 'Kemalism' has been officially clarified as the *Six Arrows* that constituted the pillars of

by the Constitutional Court (Köker, 2010; Özbudun, 2010; Can, 2010), the other side strongly opposed this view as it presumably downplayed the authoritarian inclinations of the ruling party, especially with respect to its attempt to aggrandize the executive and diminish the separation of powers through monopolistic control over the judiciary, most notably the Constitutional Court (CNN Türk, 2010; Kaboğlu, 2010; Yeğinsu, 2010).<sup>2</sup>

Taking this highly intriguing polarization as its point of departure, this article picks out two prominent scholars, namely the democratic theorist Andrew Arato and law professor Aslı Bali as two representatives of these conflicting views and scrutinizes how and in what ways they have attached different meanings to the constitutional reform proposal, especially with respect to the amendment concerning the reorganization of the judiciary in their analyses. What makes their elaborations noteworthy for this paper is the following. With different intellectual and academic backgrounds in law (Bali) and political theory (Arato), both scholars have significantly contributed to the global scholarship around the link between constitutional reform and democratic transition through empirically-grounded analyses in different regions. As Arato's recourse to novel constitution-making practices during and after Eastern European revolutions and Bali's quest to formulate models of political reform for the Middle East in the aftermath of the Arab Spring arguably demonstrate, these scholars have mainly elaborated on the question of how constitutional reform could be made part of the process of transforming authoritarian regimes in the direction of democracy (see Arato, 2000; Bali, 2016, pp. 795-817).

Based on this shared *normative* framework, both have effectively indulged in the debates around the reform proposal in Turkey in 2010 as well, dealing with it in terms of democratic transition or regression. In different ways, they have addressed the reform proposal as reflective of wider political processes – of democratization or de-democratization – that go beyond a simple question of legal/constitutional change carried out by the AKP. What makes their interpretations particularly interesting for this paper, though, is the fact that they have delivered either a critical or affirmative reading of this proposal – in terms of its implications for democracy and democratization – which makes them eligible for representing the core polemical views outlined above. While Bali labels the proposal as part of a liberalization and democratization process in its challenge towards the 'tutelary state mechanisms', Arato deems it as part of 'populist' de-democratization in its majoritarian/authoritarian inclinations.

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the sovereign ideology: republicanism, secularism, populism, statism, nationalism and revolutionism. The 'Kemalist' ideology was first included in the ruling party CHP's program and later, in the Constitution as an amendment in the 1930s. Thus, with the introduction of the constitutional amendment, Kemalism was proclaimed as the official doctrine of the Republican state (Parla & Davison, 2004).

- 2 The Turkish CC was established by the Constitution of 1961 which was drafted by the military-backed Constituent Assembly after the 1960 Coup d'Etat. It was adopted as a mechanism of judicial review to check the constitutionality of laws. Since its inception, it has been an object of controversy because it was simultaneously part of the 1960–1961 Constituent Assembly's counter-majoritarian agenda to 'balance the powers of government through constitutionalist guarantees' (Arato, 2016) and to restrict and control the political domain – the most visible expression of which is the closing down of parties – in accordance with the constitutive principles of the Turkish Republic (Uran, 2015).

This paper suggests that a close reading of the two authors' arguments discloses the fact that their essential point of controversy stems from the difference between a predominantly context-bound and global approach in scrutinizing the AKP's constitutional politics around 2010. While Bali adheres to a historically contextualized approach and assesses the reform proposal against Turkey's political/constitutional background, overwritten by the persistent legacy of the Kemalist authoritarian tutelary regime and its enduring institutions like the Constitutional Court (CC from now on) and the military, Arato puts forward a global approach and interprets the reform proposal as a manifestation of the global populist challenge to the normative liberal-democratic framework and its indispensable formal institutional prerequisites that guard horizontal accountability, one example being the independent judiciary. Thus, this paper argues that their difference of opinions with regard to the most contested part of the amendment that concerns the restructuring the CC is essentially an extension of the difference between a context-bound and a global perspective. This paper suggests that an investigation into how these different perspectives effect their judgements on the AKP's reform proposal can offer us a new lens through which we can unearth the fundamental points of disagreement that structure the scholarly disputes around the 2010 Referendum in Turkey.

In the second part, this paper gives a brief historical summary of the political context that provides the background to the 2010 Referendum. It argues that this context is determined by the crisis-ridden tensions and confrontational encounters between the AKP and the 'secular establishment' embodied most visibly by the CC. After investigating this context, the third and fourth parts of this paper first investigate Arato's reading of the constitutional amendment package in 2010 and then, show how Bali puts forth a contrasting reading on the same issue. It argues that these readings should be analyzed in terms of their diverse approaches to the AKP's (constitutional) politics at the time which either label it as populist in its majoritarian/authoritarian inclinations or democratic in its challenge towards the 'tutelary state mechanisms'. It particularly deals with how they conceive the role of the CC as the antagonistic other of the AKP's politics at the time. It argues that while Arato utilizes populism as a global political logic characterized by an embodiment model of representation and an incentive to colonize the state – which are embedded in its *telos* towards promulgating an authoritarian 'hybrid' regime – in order to assess the reform package, Bali emphasizes the 'particularity' of the Turkish context and offers a context-bound analysis that leads her to affirm the reform proposal as liberal-democratic. In the fifth part, it critically deals with each argument and asks whether there is a way to counterbalance the 'context-bound' approach with the 'global' and *vice versa* in order to provide a more comprehensive framework through which to understand the AKP's constitutional politics around 2010.

## **2. Turkey's 2010 Constitutional Referendum**

Turkey went through an important constitutional referendum on September 12, 2010, the date marking the 30<sup>th</sup> year of the military take-over which in turn heightened its symbolic value as a contestation of and confrontation with the *coup d'état*. Resulting in the passage of a package of

constitutional amendments with the support of 58 percent of voters, the referendum perpetuated the AKP and its leader PM Erdoğan's self-image as the initiator of a new social contract forged between the people and their 'real' representatives in the government. The constitutional amendment package consisted of twenty-six amendments and these all made important changes to the 1982 Constitution which was and is still in force.

These twenty-six amendments included provisions that fell directly within the government's allegedly liberal-democratic stance in 'civilianizing' and 'liberalizing' the coup-era constitution and covered making possible individual appeals to the CC; strengthening gender equality and protection for children, the elderly, veterans and the disabled; and improving collective bargaining rights (Köse, 2014, p. 124-125). In line with these amendments but with much wider implications for the AKP's self-presentation as a liberal-democratic political actor that challenges the vestiges of the military junta regime (1980-1983), there were also constitutional provisions that removed constitutional immunities for the perpetrators of the military coup of 1980; reduced the jurisdiction of the military courts and brought the decisions of the Higher Military Council (*Milli Güvenlik Kurulu*, MGK) under judicial review (Bilgin, 2010; Özbudun, 2011; Kalaycıoğlu, 2012). What caused much controversy during the Referendum process though was the constitutional provisions that directly aimed at altering the composition of the judiciary, mainly the Turkish CC and the High Council of Judges and Public Prosecutors (*Hakimler ve Savcılar Yüksek Kurulu*, HSYK)<sup>3</sup>. According to this new arrangement, the number of sitting judges in the CC would increase from 11 to 17. The parliament would select three judges from the candidates nominated by bar associations and the Supreme Court of Appeals (*Yargıtay*) and the President would appoint the other 14 judges (Özbudun, 2011). In line with this expansion of CC, the number of the members of the judicial council, HSYK increased from seven to 22 and they would no longer be elected only by the Supreme Court of Appeals (*Yargıtay*) and the Council of State (*Sayıştay*), making the appointment procedure more open to the effects of lower-level administrative and judicial institutions.

The 2010 Referendum has taken place in the AKP's second term of office (2007-2011) which was a crisis-driven context in which the ruling party struggled to simultaneously preserve and consolidate its power against the established secular power, i.e., the military and the judiciary (Akça and Balta-Paker, 2013, pp. 83-84; Akça, 2014; Yeğen 2017, pp. 76-79). Following the initial phase (2002-2007) which thrived on a peaceful co-existence between the secular establishment and the AKP as a consequence of the latter's leading role in a passive-revolutionary project, i.e., the absorption of the anti-systemic legacy of Islamism into the enduring patterns of secularism – alongside neoliberalism – around the label of conservative democracy (Tuğal, 2009), this latter period was marked by tensions that eventually evolved into an antagonistic confrontation between the two power-blocs of the secular establishment and the AKP (Akça, 2014). This transformation was most visible in the changing nature of the constitutional politics. While the AKP's first term was marked by a 'consensus' between the ruling party and the main opposition

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3 In Turkey, HSYK is responsible for judges' and prosecutors' appointments, promotions and transfers as well as disciplinary proceedings.

party, the secularist Republican People's Party (CHP, *Cumhuriyet Halk Partisi*) on constitutional reform in line with the EU standards (Kalaycıoğlu, 2011, pp. 272-73; Yeğen, 2017) which had no sign of disagreement from either military or judiciary, this latter period was mostly distinguished by the struggles between the aforementioned two power-blocs. There were important turning points that pointed to and exacerbated the tension between the two which in turn added impetus to the AKP's attempts for constitutional change in matters directly related to its survival as well as its power consolidation.

The first crisis erupted in the 2007 presidential elections. PM Erdoğan's call to Abdullah Gül – who was the former prime minister from the AKP cadres – for nomination for presidency unleashed the already present suspicions with regard to the AKP's underlying motives for a regime change. After the first round of elections for Gül's candidacy, the Office of the Chief of General Staff issued a memorandum, reminding the public that the army in Turkey had the duty and responsibility of protecting the fundamental principles of the Republic. In addition to that, the CC attempted to block Gül's candidacy at the behest of the opposition party, CHP with a decision on the minimum number of parliamentary deputies required for the votes for the presidential candidate. This counterattack resulted in the AKP's call for early general elections which finalized with the increase of support for its rule and the inauguration of the AKP's second term in office (Hale and Özbudun, 2010, pp. 39-42). The crisis that erupted in the presidential elections intensified in the upcoming years and unfolded more and more through the use of constitutional/legal means as instruments of political struggles from both sides. There were many instances that testified to such crisis-induced instrumentalization of constitutional/legal means like 1) the 2007 constitutional referendum that allowed for direct presidential election, 2) the AKP government's constitutional proposal to reform the (constitutional) law that banned the wearing of headscarves in institutions of higher education and the CC's decision to overturn this legislation, and 3) the AKP closure case and the CC's – at least the majority of judges' – decision that the AKP had indeed served as a 'focal point' for anti-secular activities (Tomuş, 2020, p. 78). Especially the CC's increasing role in hindering the AKP's political initiatives was an expression of the intensification of the process called 'judicialization of politics', i.e. the High Court's judicial activism in matters related to politics (Belge, 2006; Shambayati, 2008; Tezcür, 2009). In other words, the party closure case (Özbudun, 2010) as well as the CC's controversial decisions on the 'unconstitutionality of constitutional amendments' regarding the issue of headscarf ban (Yolcu and Roznai, 2012) disclosed the High Court's involvement in politics through constitutional review. In both cases, such judicial activism occurred on behalf of the *founding principles* of Kemalism (mainly secularism) which were entrenched in the eternity clauses of the 1982 Constitution and which expressed – according to the reports prepared by the CC on the headscarf issue – the irrefutable and irreversible decision of 'the constituent power' (Arato, 2010b, p. 481). From this perspective that anchored itself on the unamendable articles which were directly derived from the decision of the constituent will and entrenched in the 1982 Constitution, the legislative majorities like the AKP would only represent a constituted power

which had no legitimate authority whatsoever to alter the hierarchically superior decisions of the constituent power (Yolcu and Roznai, 2012, pp. 197-198).

The backlashes from the CC have only served to accelerate the AKP's antagonization of the High Court and its activism as it perceived the latter as an "unelected guardian" that trumped the governmental initiatives to legislate according to the electoral mandate. Building on the confidence of 'electoral victory' in 2007 as well as the voters' support for the constitutional amendment the same year, the AKP decided to take on the challenge from the high judiciary in 2010 (Yeğen, 2017, p. 77). It proposed a major reform package that most significantly amended the constitutional articles regarding the structure of the CC as well as the HSYK and this package was passed via the Referendum held in 2010 with a massive support from the voters.

The brief summary presented above shows that the 2010 Referendum is directly an expression of the AKP's struggles to preserve and consolidate its power against the Kemalist/secular establishment, specifically against the CC's interventions and interruptions which had erupted on behalf of 'constituent power' and 'constituent principles' of the Turkish (constitutional) polity. While most scholars noted and agreed upon the political stakes behind the call for Referendum, there were nonetheless divergent opinions on the political implications of the constitutional amendments, and this was intimately related to their overall assessment of the AKP's politics as a democratizing or non-democratizing force in the face of challenges from the CC.

### **3. Andrew Arato's Liberal-Democratic Critique of the Constitutional Amendments: The AKP as an Authoritarian-Populist Force**

A prominent democratic theorist well-known for his work on democratic transitions as well as for his pioneering studies on the paradigm of post-sovereign constitution-making (2016), constituent power (2017) and populism (2022), Andrew Arato has been actively involved in the polemical debates around the implications of the constitutional amendments in 2010 (Arato, 2010a & 2010b). His involvement continued in later periods as well, focusing on the intrinsically linked trajectories of the AKP's political mode of governance and its pursue of constitutional change/replacement (Arato, 2019 & 2022). His approach towards the 2010 amendment package was highly critical and he challenged it basically on two fronts, one related to the method of its deliverance and the other related to its content. While the first critique was rooted in his preferred normative model of how a 'democratic transition' should be pursued, the other concerned his analysis of the AKP's attempt to reorganize the High Courts (Arato, 2010a, pp. 345-350 & Arato, 2016, pp. 248-251).

One should argue from the outset that even though Arato initially introduced his arguments through a context sensitive analysis of the path-dependent trajectories of Turkish constitutional history, he nonetheless aspired to deliver a globally operative dichotomy between populism and liberal-democracy which presumably unfolded in the two aforementioned aspects of the AKP's reform proposal. In Arato's global understanding of the populist challenge to the

liberal-democratic framework, the former is defined as a political logic that takes recourse to the unmediated expression of the popular will embodied by a sovereign representative and challenges the constitutional mechanisms of liberal-democracy as mediations and limitations that hinder such expression (Arato, 2022, p. 145). On the other side of the equation, we encounter a normative definition of the liberal-democratic articulation which thrives on the inseparability between the democratic and liberal pillars. Against some democratic scholars' contention that populism is indeed a challenge that upholds the democratic peoplehood against the growing encroachment of the liberal-institutional framework occurring within neoliberal processes of depoliticization (Mouffe, 2018) , Arato utilizes an Habermasian and Lefortian understanding that underlines the necessary role of the normative and institutional premises of liberalism like the rule of law, the constitutional protection of rights and separation of powers for a functioning democracy (Arato, 2022, p. 145). From this perspective, contrary to being obstacles to the *expression* of the democratic ideal of self-rule, the liberal/constitutionalist ideals, procedures and institutions provide the very conditions for it. For, it upholds the people as the source of political legitimacy (popular sovereignty) while making sure to (ideally) *include* all citizens. On the one hand, as Habermas argues, the liberal safeguards for *inalienable* individual liberties make sure that the will of the people is generated by the 'actual process of deliberation between *free (autonomous) and equal citizens*' which is – ideally – inclusive of the *whole* demos (Habermas, 1996, pp. 118-131). On the other hand, as Lefort suggests, the institutional/procedural framework (free elections etc.) informed by the minimal requirements of liberalism (especially the principle of limiting power) makes sure that no party excludes the minorities on the fallacious presumption of embodying/incarnating the People as a substantial unity (Lefort, 1988, pp. 8-20). As populism is aversive to the procedural and liberal *mediations* which comprise the ideas of rule of law, checks and balances, personal liberties and a fair competitive electoral field, it disfigures and derogates the democratic space, paving the way for an authoritarian/dictatorial power to claim to speak on behalf of the People.

Based on this conceptual framework, Arato first argued that the AKP followed the method of populist majoritarian imposition which was already prevalent in the ways in which it pursued constitutional change, at least since 2007 crisis on the presidential election (Arato, 2010a, p. 345, Arato, 2016, p. 248). His critique of this aspect of method was driven both by his particular reading of the constitutional crisis in the time span covering 2007-2011 in Turkey and his general normative approach to the question of the politically legitimate ways of replacing/changing the constitution. With respect to the first level, he argued that the aforementioned constitutional crisis between the CC and the AKP unfolded in two rounds ('of horse race') and these were 1) the High Court's decision to remove the amendments regarding the headscarf issue followed by 2) the party closure case which nearly finalized with the Court's decision to ban the AKP (Arato, 2016, pp. 238-244). According to Arato, in the aftermath of such crisis-inducing confrontations, the AKP explicitly chose to antagonize the TCC and followed the populist-majoritarian route toward constitutional change in 2010 ('third round of horse race') instead of seeking consensus and compromise for a new constitution through negotiations between parliamentary and

non-parliamentary parties (Arato, 2016, p. 248). The AKP's method of majority imposition that was based on a full-fledged confrontational stance was *partially* a response to the CC's attempts to 'freeze the constitutional process' which became especially visible in the above-mentioned first round. The CC's controversial decision on banning the (constitutional) amendments to articles 10 and 42 which were proposed in order to lift the ban on headscarf in Turkish universities rose upon on the normatively problematic assumption of 'preserving' the originary constituent power's decision – on secularism – that could not be altered by any legislative majority insofar as the latter was strictly in the confines of 'constituted power' (Arato, 2016, pp. 242-243). This normatively fallacious 'preservationist' argument, in Arato's view, has in turn intensified the AKP's majoritarian as well as antagonistic stance which *answered back* on the grounds of an equally problematic claim on deriving its "constituent authorization from the democratic electorate" (Arato, 2012, p. 474). He summarized the AKP's self-presentation as a legitimate actor with constituent authority in the following way: "The parliamentary majority has been elected by and therefore expresses the will of the majority of the Turkish people, who have the right to give themselves *any* constitution they please." (Arato, 2016, p. 239). Here, according to Arato, we come across two problematic claims put forward by the AKP: 1) the constituent power of the people can be embodied by an elected authority and 2) the 'majority' of the Turkish electorate can account for the People as a whole. First of all, the AKP's claim to voice the demands of the majority of the people was built upon a false premise as the "majorities of both 2002 and 2007 were artefacts of the very exclusionary electoral law with a ten percent threshold that eliminated many otherwise viable parties from parliament." (Arato, 2016, p. 239) Second and most importantly, such a unilinear extension of the people's constituent power to the parliamentary majority's presumable constituent authority did in fact conflate constituent and constituted power, ascribing the latter a 'sovereign' capacity to *make* a new constitution from scratch.

Put in the wider context of Arato's work, the AKP's claim amounted to nothing less than 'populism' defined as a particular political logic of embodiment: "Populism seeks to occupy the space of the constituent power." (Arato, 2017) According to Arato, what is at stake in populism as a political logic is not solely 'electoral majoritarianism', i.e. democratic legitimacy in a purely majoritarian manner (Arato, 2019) but a party's or a sovereign figure's claim to *embody* the people as a whole. In more of a theoretically-oriented quest to depict the 'theologico-political' matrix that is constitutive of populism, he argues that the latter thrives on the proto-totalitarian logic of popular sovereignty in claiming that there is an undivided and indivisible identity of *the* People with a unitary will ('Hidden God') and that this will can be *embodied* by a party, leader or a sovereign organ like the parliament (Arato, 2013). Thus, the AKP's claim to embody the constituent power of the people and replace the constitution accordingly pinpoints towards such a populist embodiment. Although the AKP had not succeeded in replacing the constitution with a new one, the reasoning behind their self-admitted authority to change the constitution as a single party still derived from such a fallacious populist assumption.

For Arato, such a populist assumption had made the AKP's majoritarian method of constitutional change normatively illegitimate from the perspective of constitutional democracy. According to

him, the normative criterion for distinguishing between the legitimate and illegitimate forms and methods of constitution-making (or amending) is their proximity to the ‘post-sovereign constitution-making’ paradigm or lack thereof – with the obvious proviso that every country seeking democratic transition has its own independent trajectories (Arato, 2010b, p. 476). What ultimately defines the post-sovereign paradigm is the multi-stage process of constitution-making with the basic constitutionalist principles of “inclusion, compromise, publicity, free elections, self-limitation and enforceable legality” applied to the process itself, getting in the way of a particular group to elevate itself to the sole embodiment of the constituent power of the people (Arato and Tombuş, 2013, p. 428; see Tombuş, 2020). In Arato’s view, the prefix – post in the post-sovereign paradigm designates the “rejection of embodied, unitary, ‘substitutionist’ popular sovereignty in favor of a pluralistic conception of democratic legitimacy” (Arato and Tombuş, 2013, p. 428). In this juxtaposition of popular sovereignty and constitutional democracy, the underlying normative reference point is the Lefortian principle of keeping the (procedural-institutional) place of power empty: no body, institution, or person should be able to claim to fully embody the sovereign people, whose place must remain “an empty place” (Arato, 2016, p. 239; also see Tombuş, 2020, p. 79). It was precisely the AKP’s disregard for keeping the place of power empty, visible in the very – majoritarian and antagonistic – procedure of changing the constitution which made the whole process leading to 2010 referendum constitutionally illegitimate.<sup>4</sup>

Arato argued that the ‘strategic’ intentions behind the proposal which have to do with the content of the proposed amendments raised a lot of questions as well. Keeping in mind that he always underlines the inextricable link between the content of constitutional change/replacement and the method of its deliverance (Arato, 2016, p. 223), this argument of his was not surprising. He argued that the essence of the amendment package lied in the constitutional provision that reorganized the composition of the High Courts and diminished the CC’s power to review constitutional amendments (Arato, 2010, p. 346, Arato, 2016, p. 248). For Arato, the AKP’s attempts to alter the membership, jurisdiction and voting rules of the TCC were only parts of the ‘court-packing’ strategy aimed at neutralizing the judiciary (Arato, 2016, p. 249). The other (liberal-democratic) provisions, e.g. proposals on affirmative action, collective bargaining and removal of immunity afforded to the perpetrators of the 1980 coup were only instrumental, tactical maneuvers to attract constituencies with pro-liberal and pro-democratic views (Arato, 2010a, p. 346). He argued that the judicial reorganization plan unveiled the AKP’s populist-authoritarian route as it aspired to remove the ‘obstacles’ that interfered with its governmental initiatives. By doing this, the AKP was following the patterns of the other populist actors *in power* who resist “all the relevant forms of power limitation, and any agency seeking to enforce it.” (Arato, 2016, p. 249)

According to Arato, populists in power generally antagonize the High Courts as the latter would intervene in order to guard “the differentiation and separation of powers none of which having the right to monopolize speaking in the name of the popular sovereignty.” (Arato, 2019, p. 331) What this guarding role of the High Courts amounts to is nothing less than keeping the aforementioned Lefortian place of power empty. As many authors suggest, the (institutional-procedural) delimitation of the empty place of power requires a constitutionalist background, i.e.,

checks and balances, free competitive elections, independent judiciary and a strong commitment to 'rule of law' (Müller, 2016, p. 68; also see Blokker, 2019; Arato, 2022, pp. 125-126). For Arato, the Constitutional Courts specifically play a significant role in preserving this background as they do not only check whether the proposed constitutional amendments are constitutionalist and thus, potentially stand in the way of the executive's possible arbitrary infringement on the constitutionalist principles of rule of law, individual liberties and so on but they also "distinguish between the democratic constituent power and the constitutionally delegated (constituted) powers of executive and legislatures." (Arato, 2022, p. 137) Thus, the very nature of the CCs in guarding this differentiation challenges the populist executive's ideal model of representation which hinges on the model of the embodiment of the democratic constituent power (Arato, 2022, p. 150). Even though Arato argues that the Turkish CC was neither the guardian of such differentiation nor liberal-constitutionalist separation of powers in ideal terms, its increasing activism during the 2007-2010 period nonetheless signified the "attempt to establish at least one check and balance in an increasingly monolithic system." (Arato, 2016, p. 248; Arato, 2022, p. 170). Thus, within a normative liberal-democratic framework, the CC still stood as a possible challenge against the AKP's populist authoritarian incentives and the most eligible way to side-step its intrusions was to pack it according to the needs of the government.

For Arato though, it was not only the AKP's antagonization and reorganization of the CC but also, its intention for the authoritarian colonization of the state that disclosed the AKP rule's populist nature. At this point, we come across a new qualification of populism that is more concerned with its processual nature as a ruling power. Such nature resides in its tendency towards incremental autocratization and aspiration for 'occupying' and 'colonizing' the state institutions that perforce clashes with the liberal-democratic differentiation of executive, legislative and judicial powers (Urbinati, 2017, p. 584; Müller, 2017, p. 596).

Arato's concern with populist de-democratization as a gradual process makes his account a part of the general literature on populism-in-power that emphasizes the latter's gradual move towards 'regime hybridization'. Scholars like Peruzzotti, Finchelstein and Urbinati argue in different ways that (modern) populism arises as a ruling power and unfolds within a democratic setting in the broader post-WW2 context of post-fascism and challenges (liberal-constitutional) democracy *from within* (Finchelstein, 2017, p. 93, 134, 150; Finchelstein and Urbinati, 2018, pp. 16-17; Peruzzotti, 2017, p. 322). More specifically, Peruzzotti describes this immanent challenge in terms of a (progressive) hybridization in which there occurs a "slow, yet steady process of transformation of the institutional landscape of democracy via the gradual dismantling of constitutive elements of liberal democratic regimes." (2017, p. 315) In a similar line of thought, Urbinati and Finchelstein argue that populism is an *internal periphery of democracy* which grows within the latter and incrementally disfigures it, "taking away most of its open, pluralistic, and deliberative traits but not its institutions and procedures as such." (2018, p. 22) Thus, in all these accounts, we encounter a transnational and cross-regional governmental mode that does not denunciate the democratic procedures (like elections, majority principle or even functioning judiciary) but incrementally transfigures and desubstantializes them in the service of aggrandizing the populist

executive. Arato's reading on populism-in-power resonates and dovetails with these accounts as he depicts the populist route towards authoritarianism as a form of democratic hybridization defined as the mixing of authoritarian practices and norms into formally democratic institutions within the gradual move towards hollowing out the latter (Arato, 2022, p. 20, 112). Within this overall understanding, he reformulates the AKP's strategy to pack courts as part of a wider process underwritten by a stealth and incremental authoritarianism that passes through different stages the endpoint of which seem to be the establishment of a distinct regime with a presidentialist constitution (Arato, 2022, p. 170; Varol, 2018, p. 339). In other words, such strategy is part of populism's *telos* towards passing the threshold between constitutional democracy and authoritarianism which unfolds, in Arato's overall schema, through an ideal-typical sequence in which populism as a governmental mode of power goes through the stages of populism-in-government, populism-as-government and populism-as-regime along a *continuum*, each one depicting a more authoritarian characteristic than the previous one (Arato, 2022, pp. 121-138).

All in all, Arato's reading predominantly utilizes populism which he associates with a global anti-constitutionalist political logic in order to understand the main features of the AKP's reform proposal in 2010. He designates the (authoritarian) populist features of the AKP's constitutional politics – in terms of method and content – around 2010 at two interrelated dimensions: its proto-totalitarian logic of claiming to embody the constituent power of the people *and* its governmental logic that incrementally derogates and disfigures constitutional democracy.

#### **4. Aslı Bali's Affirmative Reading of Constitutional Amendments: AKP as a Liberal-Democratic Force**

On the other hand, Aslı Bali, a professor of law who is well known for her studies on the particular constitutional trajectories of Turkey and democratic transition in the Middle East, has also written extensively on the 2010 Referendum and claimed that her analysis of the same process leading up to the referendum was based on a methodological and historiographic move that would refrain from obscuring the specificities of the Turkish constitutional context and instead attend to “the constitutive processes, institutional legacies, ideological commitments, historical patterns, and social stratification” (Bali, 2012, p. 315) that determine the latter. Her particular attention to the itineraries of Turkish constitutional history followed along the lines of the ‘strong state’ thesis that had been widely circulating among the liberal-democratic scholars for more than three decades (Heper, 1992; Özbudun, 1996). In broad terms, this thesis refers to a founding yet persistent authoritarian-modernist mind-set identified as Kemalism<sup>4</sup> that presumably maintains and perpetuates the patrimonial and state-centric political culture of the Turkish-Ottoman Empire and that is continuously implemented by the democratically unaccountable acts of the civilian and military bureaucracy (for a critical account see Dinler, 2003; Aydın, 2006; Bakıner, 2018). It was particularly her adoption of this thesis that grounded her identification of the AKP as an

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4 See *supra* note 1.

agent of democratization and liberalization who aspired to put an end to the ‘Kemalist’ tutelary regime and the judicial guardianship that acted on the latter’s behalf (2010, 2012).

Following this thesis, Bali argued that the very authoritarian and statist foundations of the Republic that unfolded through the (founding) Kemalist elites’ top-down modernizing project of constructing a nation has tainted the whole trajectory of Turkish politics (2012, p. 262). The state-society cleavage that determined this initial ‘modernist’ project has “later transposed into a division between the civilian and military bureaucracy of the state (*devlet*) and the elected branches of the government (*hükümet*)”, planting the later seeds of the particular conflict between the CC (as the ‘guardian’ of the state) and the AKP (as a democratically-elected government). (2012, p. 263) In other words, the judiciary’s resistance to constitutional reform(s) in 2007-2010 and the crisis induced by such resistance was directly a manifestation of a “stalled democratic consolidation originated in dynamics dating back to the founding of the Republic.” (2012, p. 309) Turkish Republican history after the single-party rule (1923-1946) was, in Bali’s words, more or less overridden with cycles of repression and liberalization whereby the ‘state’ continuously reasserted control on behalf of Kemalist ideological orthodoxy through military interventions (1960, 1971 1980, 1997) against the democratic – civilian groups (mostly governments) who were eager to liberalize the country (2012, p. 279, 310) For Bali, the post-Cold War context coupled with the destabilizing effects of military interventions have led to a minor change of strategy on the side of the Kemalist elites within this continuous schema as they began to deploy “the judiciary as a final line of defense against democratic demands for liberalization.” (2012, p. 280) Nothing really changed in terms of the crisis-inducing dynamics of state-society and/or state-government cleavage but only the role of the judiciary intensified as the “guardian of the founding ideological commitments of the state.” (2012, p. 320)

Bali’s context-bound reading of the constitutional trajectories of Turkey delivered a different interpretation of the “independent judiciary” presumably dictated by liberal-democracy. She argued that, contrary to the Western constitutionalist paradigm within which High Courts are embedded in a rights-based constitutionalism and their practices of “judicial review” protect a substantive set of individual rights against the state’s possible encroachments, the CC’s predominant role has always been guarding the ideological commitments of the state in Turkey (Bali, 2012, p. 311). Thus, from a liberal-democratic normative standpoint, the independence of the Turkish judiciary paradoxically served the sustainment of the founding authoritarian ideology of Kemalism, not least because it has always been insulated from democratic accountability in order to control and contain the possible dangers that the electoral majorities’ divergence from the state’s ideological commitments might introduce (Bali, 2012, p. 258).

Thus, the AKP’s responses – in spite of all the frustrations caused by the judiciary – in advancing the reform process in 2010 were in fact an insistence on liberalizing/ democratizing the Turkish political/constitutional context in accordance with the demands from the ‘democratic’ electorate hitherto pushed to the ‘margins’ of politics designed by the Kemalist elites comprising of the military, judiciary and the Kemalist middle-class involving the CHP (Bali, 2012, pp. 295-296). In

contrast to Arato, Bali suggested that the four key areas of reform – individual freedoms, political rights, civilianization *and judicial reform* – in the package were inseparably linked as they were advancements towards liberalizing and democratizing the semi-authoritarian regime in Turkey (Bali, 2010). Suggesting that a context-sensitive reasoning would necessarily uphold *judicial accountability* (to other branches of checks and balances like the elected officials) over *judicial independence* in Turkey, she argued that the change in the composition and election process of high judiciary was nothing less than a “greater democratic accountability in the appointments process.” (2010) The expansion of the CC (from eleven to seventeen members) as well as the HSYK (from seven to twenty-two members) made sure that the appointment procedure was more democratic, enhancing the role of the Parliament in the appointments to the TCC as well as the role of lower-level administrative and judicial institutions in appointments to the HSYK. This new make-up promulgated, according to Bali, the loosening of the Kemalist ‘ideological’ guardianship that was also a consequence of the ‘elitist’ circumscription of the judiciary, i.e., the restriction of the available candidates for the TCC and HSYK to the members of the High Courts (Bali, 2010).

So, all in all, Bali’s interpretation of the AKP’s reform proposal significantly diverged from Arato’s critical reading and this was mainly due to her emphasis on the particularity of Turkish historical context underwritten by the persistence of an Kemalist authoritarian tutelary regime. It is this context-bound interpretation that led her to affirm the so-called liberal-democratic aspects of the reform proposal.

## 5. Arato’s Global and Bali’s Context-Bound Readings: A Critical Commentary

Until now, this paper has aimed to investigate the ways in which Arato’s global and Bali’s context-bound approach have determined their particular interpretations of the AKP’s constitutional reform proposal in 2010 respectively. In this final section, it aims to present the possible ways through which one could enrich these accounts via counterbalancing the global approach with the context-bound one and *vice versa* which will arguably provide a more comprehensive picture of the AKP’s constitutional politics around 2010.

Her illuminating insights into the context-bound trajectories of Turkey’s long-standing authoritarian constitutional politics notwithstanding, Bali’s context-bound reading suffers from two major shortcomings. First, she tends to conflate context-sensitivity with a form of exceptionalism, i.e., reading Turkish constitutional history along the lines of a *sui generis* dichotomy between state and society or between the Kemalist tutelary regime and democratically-elected civilian governments. In such an exceptionalist framework, she completely disregards judicial independence as a form of Kemalist guardianship which in her view paradoxically “serves to sustain the power of old-regime decision makers and block pathways to future political liberalization.” (Bali, 2012, p. 243) Such an assessment leads her to completely ignore the possibility that the AKP’s attempt to restructure the judiciary might not be democratic but

authoritarian. In fact, we now have empirical findings that assert the view that the result of the ratification of the reform proposal has in fact contributed to the authoritarian capture of the judiciary in line with the AKP's Islamic conservative ideological commitments (see Varol, Pellegrina and Garoupa, 2017). For instance, just after the ratification of the amendment package in 2010, there occurred a highly controversial election for the selection of the members for HSYK and the pro-government candidates won all ten seats, brushing aside candidates who are members of different organizations (like *YARSAV* and *Demokrat Yargı*) (Bakiner, 2016, p. 150; İnşel, 2010). In a similar manner, the CC's approval of the educational reform which was based on the so-called Law 4+4+4 in 2012 and which provided courses of Islamic instruction in the middle and high schools curricula with extra elective courses also pinpointed towards the populist-majoritarian leanings of the new CC as its decision supported the exclusive teaching of the majority religion of Sunni-Islam (Öder, 2017). Even the later trajectories of the AKP's constitutional politics have confirmed this overall tendency to capture and monopolize the judiciary to the point of making it totally subservient to the policies of the new Presidential regime that was ratified in the 2017 Constitutional Referendum, a Referendum which took place during the state of emergency declared after the coup attempt in 2016 (Aydın-Çakır, 2023, p. 13). Significantly, such ratification – which has empowered the executive in unprecedented ways – was accompanied by the ratification of constitutional provisions that significantly strengthened the AKP's power over the CC and HSYK. For, all appointments would now be made either by the parliament dominated by the AKP or the President who would now officially declare himself as the leader of the incumbent party as one of the amendments opened the way for him to let go of political neutrality, affirming Arato's – rather than Bali's – views on the AKP's populist incentives to gradually colonize the state (see Ekim and Kirişçi, 2017).

Although it would be a strictly retrospective judgement to claim that Bali has mistaken the AKP's authoritarian populism for democratization and liberalization, one could still argue that her excessive emphasis on the contextual itineraries of Turkey's Kemalist-republican authoritarian legacy embodied by the High Courts leads her to oversee the possibility of a similar authoritarian political logic carried out by the AKP at the time.

Second, she overrides the possibility that a strict dichotomic vision of Turkish politics that opposes the 'center' (state) to the periphery ('the marginalized masses') is not reflective of a sociological reality but an extension of the hegemonic operation carried out by the conservative right-wing political legacy in Turkey (Ateş, p. 111). As some scholars have illuminatingly noted, the dualistic narrative around state and society (or 'center' and 'periphery') in fact has actually played a critical discursive role, especially in the period between 2002-2010, in the AKP's endeavor to garner support from the electorate (See Tombuş, 2020, pp. 60-61; Bakiner, 2018, p. 504; Sözen, 2020, p. 222). Thus, at this level, her context-bound analysis comes close to recirculating an already present populist hegemonic discourse without giving due attention to how it might serve the AKP's power consolidation.

In both of these dimensions, Bali's context-bound account needs to be counter-weighted by a global understanding of populism's autocratic dynamics like the one put forward by Arato that would offer us a new perspective on the AKP's possible tendencies for power concentration and consolidation.

Arato's utilization of the normative imaginary around the dichotomy between populism and liberal democracy is particularly useful as it helps us to insert the AKP's reform proposal within the emergent global authoritarian retreat which is emblemized by the incrementally autocratizing dynamics of populism in power. In fact, the globally observable trend in the populists' use of legal/constitutional means in the service of consolidating their power, curbing democratic mechanisms of horizontal accountability, e.g., the judiciary and constructing a more authoritarian order validates Arato's analysis. In fact, some examples like the right-wing populist Fidesz party and its leader Orban's use of constitutional amendments and eventually, constitutional replacement (2012) to restructure the Hungarian Constitutional Court's size, appointment procedures as well as its jurisdiction *or* Venezuela's left-wing populist regime's utilization of court-packing strategies under the leadership of Chavez and Maduro within the time span of two decades starting from 1999 clearly show us the trans-regional dynamics of a populist de-democratization across different political spectrums (Landau, 2013, p. 208-209; Holgado and Urribarri, 2023, pp. 266-272).

However, his approach has to be complemented and qualified by an analysis of the context-bound trajectories of the Turkish right-wing religious-conservative politics that finds its latest expression and resurgence in the AKP's populist discourse as well as its operational logic of governance in the crisis-driven context that covers the period between 2007 and 2010 (see Taşkın, 2008). In addition, it is necessary to enrich his account by giving due attention to how the liberal-democratic values became constitutive of the AKP's populist discourse in its anti-coup rhetoric which essentially targets the 1980 military intervention and the 1982 Constitution.

Starting with the first dimension, although a comprehensive balance sheet of the mentioned right-wing legacy is beyond the scope of this paper, it is crucial to note its core element, namely its rhetoric of "national will" in the service to understanding the AKP's constitutional politics and Referendum campaign around 2010. A rhetoric that has gained its prominence with the rise of the conservative right-wing Democrat Party (DP) and its electoral success in the 1950 elections that ended the Kemalist one-party rule, "national will" has been equated strictly with the electoral majority that is then further refined and represented as the authentic ("culturally-conservative") people who are deprived of their democratically legitimate power by the entrenched bureaucratic elites' anti-democratic occupation of the state (Sozen, 2008, 2020; Kazım Ateş, 2017). Significantly, the imagined elites included the judiciary alongside military as well, especially after the 1960s as the new constitutional regime which was promulgated in the wake of the military overthrow of the DP government has institutionalized the CC as a checking mechanism over the possible majoritarian/ist capture of the state and the elective majorities' possible divergence from the founding Kemalist principles (Işıkse, p. 714; Belge, p. 663).

There are specifically three features of this right-wing conservative politics that makes it populist and these concern its anti-elitism, its vision of democracy and its particular aim to transfigure the electoral-representative procedures into a tool of confirmation of an already existent people. Its anti-elitism targeting the power bloc comprised of military and civil bureaucracy is an example of the (Laclauian) populist discursive construction of an antagonistic frontier separating people from (institutionalized) power: ‘... populism involves the division of the social scene into two camps. This division presupposes the presence of some privileged signifiers which condense in themselves the signification of a whole antagonistic camp (‘the regime’, ‘the oligarchy’, and ‘the dominant groups and so on, for the enemy...’) (Laclau, 2005, p. 87). Also, its preferred model of democracy is populist as it is imagined *solely* in terms of a procedural/electoral mode of authorization of the rulers by the electorate and a reconquering of the state mechanisms by the “authentic” popular will most elaborately represented/embodied by the executive power (Somer, 2016). For, such a view of democracy primarily excludes the liberal-constitutionalist safeguards that would pose counter-majoritarian limits for the unbridled expression of popular will and deems them anti-democratic, attesting to the aforementioned authoritarian tendencies of populism. Finally, its particular approach to the semantics around the procedure of electoral authorization is also populist as it aims to transfigure the representative nature of elections in the direction of affirming an already existent people (see Sözen, 2019, 277) and effectively hollowing out the transformative nature of the prefix – re of re-presentation that would modify the people as a procedurally mediated aggregate of individual votes or in Lefort’s words, a numerical element rather than a substantial and unitary “will” (Lefort, 1988, p. 230; see Arditi, 2003, p. 22). In this approach, the elections are not considered as an institutional device for assessing different competitive claims to represent the latent popular will for a brief period of time but “as the revelation of a majority that is claimed to already exist (‘the good’ or ‘authentic people’)”. (Urbinati and Finchelstein, 2018, p. 23).

All these three populist features of the conservative right-wing legacy reappear in the AKP’s constitutional politics in the process that leads up to the 2010 referendum (2007-2010), designating a break from the intermittent period of the AKP rule (2002-2007) characterized by a pro-EU and pro-liberal stance that was conciliatory with and non-confrontational towards the “secular” establishment (Turam, pp. 34-35; Yavuz, p. 68). To reiterate, in the later period leading up to the Referendum, the AKP antagonized the CC as a juristocratic body composed of bureaucratically enclaved elites who hinder the parliament-led democratic processes of amendment (“anti-elitism”)<sup>5</sup>, envisioned the democratic transition in terms of redesigning the judiciary as a servant to the so-called people (“vision of democracy as reconquering the state”)<sup>6</sup> and finally, depicts the Referendum as a mode of acclamation of the AKP leadership by an already existent “authentic”

5 During the Referendum campaign, PM Erdoğan declared: “We are defending change against the bureaucratic elites who resist change.” *Sabah*, August 13, 2010.

6 In an Istanbul meeting, Erdoğan declared that “the judiciary, which used to be their back garden, is now going to be the nation’s [people’s] front garden” (2010, Istanbul meeting).

people against the vestiges of elite power who are part of a broad coalition deemed as the ‘axis of evil’ ( “transfiguration of elections”)<sup>7</sup>.

Interestingly, during the 2010 Referendum, the rhetoric of national will coexisted with a liberal-democratic discourse that presented the reform proposal as a chance to implement democracy along the lines of rule of law and human rights. However, this reference to liberal ideals was part and parcel of the AKP’s populist discursive articulation of the victimized people against the oppressive measures adopted by the military regimes, the latest example of which is the 1980-1983 junta. In this regard, Arato’s assertion that the liberal provisions of the reform proposal – including the amendment that lifts the ban on putting the junta leaders on trial – are merely a window-dressing, i.e., instrumental measures that veil the AKP’s populist authoritarian intentions misses out the fact that the liberal rhetoric in fact constituted an integral part of the AKP’s time-bound populist hegemonic politics at the time. Here, the normative imaginary around a strict dichotomy between liberal-democracy and populism falls into disarray, at least when we take into consideration the fact that the AKP formulated its populist discursive articulation in terms of a liberal (“yes to rule of law, no to the rule of rulers”) challenge to the lingering effects of the 1980 military coup during the campaign for the 2010 Referendum (see Hürriyet, 2010). Promulgated in the prevalent counter-hegemonic memory narrative of “coming to terms with the past” at the time (Bakiner, 2013), the AKP’s Referendum campaign counter-posed the rule of law and human rights against the past injustices, cruelties and atrocities committed by the junta during its reign (1980-1983) and presented the Referendum as a necessary step towards confronting these assaults as well as the authoritarian/illiberal nature of the 1982 Constitution (Birnbau, 2010).

In the end, the intricate ways in which the AKP’s populism combines the right-wing conservative legacy of the “national will” with a liberal-minded “anti-coup” rhetoric around 2010 provides us with a context-sensitive perspective that would arguably enrich and complement Arato’s otherwise useful global analysis of the reform proposal.

## 6. Conclusion

This article has revisited two opposing narratives on the implications of the AKP’s constitutional reform proposal that has been put to Referendum in 2010 in order to excavate the tensions between a predominantly context-bound and global approach. Its main intent was to provide a new lens through which we could elaborate on the reasons as to why there was such a visible divergence in the scholarly assessments on the nature of the reform proposal at the time of the Referendum and propose a new analytical framework based on the juxtaposition and interpenetration of the ‘global’ and the ‘contextual’. It has picked out the constitutional scholar Bali and democratic theorist Andrew Arato as two main representatives of these two approaches and compared and contrasted their views on the question of whether the amendment package would be considered

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7 During the Referendum campaign, PM Erdoğan declared: “They run away from democracy and freedom. However, they agreed to oppose the amendments that will enlarge the people’s horizons. This is a coalition of the evil.” *Hürriyet*, August 1 2010.

an important step for democratic transition or instead a part of the global retreat realized by the populist dynamics of authoritarianization against the normative bulwarks of the liberal-democratic institutional framework. In both views, it argued, the main lynchpin around which the affirmative and critical assessments revolved has been the amendments concerning the reorganization of the judiciary. It has attested to the ways in which Bali's context-bound approach has mainly emphasized the ossified Kemalist authoritarian political culture and interpreted the reform proposal as part of a wider liberalization and democratization attempt to transcend it, while Arato's global approach has focused on the populist-authoritarian incentives behind the proposal. It has also argued that while Bali's approach should be counter-weighted with an analysis attuned to the global dynamics of populism, Arato's approach has to be complemented by an analytical framework more attentive to the AKP's indigenous form of populism underwritten by the curious amalgam of the right-wing conservative legacy and a liberal "anti-coup" rhetoric in the period around 2010 Referendum. In light of the likely reemergence of discussions around a new constitution in Turkey, one can conclude that such a perspective that reinterprets the global through the contextual and *vice versa* will not only help us navigate through the scholarly debates around 2010 but also, understand the present political conjuncture, given the fact that 'populism' and 'Kemalism' still remain to be the two major lynchpins around which the political debates under the AKP rule revolve.

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